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*Attorneys for Defendant*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Joseph Pole,  
Plaintiff,  
vs.  
Wells Fargo Bank, N.A.  
Defendant.

NO.

(formerly Maricopa County Superior  
Court Case No. CV2015-053398)

**NOTICE OF REMOVAL**

Defendant Wells Fargo Bank, N.A. ("Wells Fargo") hereby gives notice of removal of the civil action captioned *Pole v. Wells Fargo Bank, N.A.*, CV2015-053398, from the Arizona Superior Court, Maricopa County (the "State Court Action"), to the United States District Court for the District of Arizona.

Wells Fargo files this notice pursuant to 28 U.S.C. § 1446(a) and L.R. Civ. 3.6. The United States District Court has jurisdiction under 28 U.S.C. § 1332. Undersigned counsel verifies that a complete copy of the filings in the State Court Action, which his firm obtained from the Arizona Superior Court, Maricopa County, is attached hereto as **Exhibit "A."** Such verification is attached hereto as **Exhibit "B."**

As grounds for removal of this action, Wells Fargo states as follows:

1. Wells Fargo has been served with the Complaint in this matter. There are no other defendants identified in this action.

1           2.     This Notice of Removal is filed within thirty (30) days of service of the  
2 Complaint on Wells Fargo.

3           3.     Wells Fargo has not pled, answered, or otherwise appeared in the State  
4 Court Action. Wells Fargo hereby reserves all defenses, including defenses based on lack  
5 of personal and subject matter jurisdiction.

6           4.     The United States District Court has original jurisdiction over this action  
7 under 28 U.S.C. § 1332 because there is complete diversity of citizenship between  
8 Plaintiff and Wells Fargo, and the amount in controversy exceeds the sum or value of  
9 \$75,000.00.

10          5.     Plaintiff Joseph Pole alleges that he is a single man who resides in Maricopa  
11 County, Arizona. (*See* Compl., Exh. A, at ¶ I.) Joseph Pole, therefore, is a citizen of  
12 Arizona.

13          6.     Defendant Wells Fargo is a National Bank with its principal place of  
14 business in South Dakota, which is also the state designated as its main office with the  
15 Office of the Comptroller of the Currency. (*See* Catlett Decl. attached hereto as "**Exhibit**  
16 **C**" at ¶ 2.) Wells Fargo, therefore, is a citizen of South Dakota. *See* 28 U.S.C. § 1348;  
17 *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 306 (2006) ("[W]e hold that a national  
18 bank, for § 1348 purposes, is a citizen of the State in which its main office, as set forth in  
19 its articles of association, is located.").

20          7.     The amount in controversy exceeds the sum or value of \$75,000.00.  
21 Plaintiff purports to bring this action on behalf of himself and an Arizona corporation  
22 called EBJJ Enterprises, Inc. ("EBJJ"), in which Plaintiff claims to own a 50% interest.  
23 Plaintiff claims that EBJJ maintained bank accounts at Wells Fargo. Plaintiff alleges that,  
24 in 2006, Plaintiff's business partner unilaterally withdrew funds from EBJJ's accounts and  
25 deposited them into an account in his partner's own name. Plaintiff alleges that he  
26 discovered that EBJJ's funds had been moved to his partner's account, and demanded that  
27 Wells Fargo return the funds to the EBJJ accounts. Plaintiff claims that Wells Fargo  
28 informed him that the money had been returned, but that the funds had not been returned.

1 In the Complaint, Plaintiff asserts claims against Wells Fargo for negligence, negligent  
2 misrepresentation, and aiding and abetting breach of fiduciary duty, and alleges that, for  
3 each of those claims, his damages include, *inter alia*, "the loss of cash on deposit at Wells  
4 Fargo Bank." (*See, e.g.*, Compl., Exh. A, at ¶¶ XVI, XXI, XXVI.) Plaintiff also seeks  
5 punitive damages against Wells Fargo. (Compl., Exh. A, at 8 ¶ 6.)

6 8. Plaintiff has separately sued his former business partner; that case is  
7 pending in Arizona Superior Court, Maricopa County, as Case No. CV2014-011858. (*See*  
8 First Am. Compl., *EBJJ Enters. et al. v. Nona et al.*, attached hereto as "**Exhibit D.**")  
9 Prior to that litigation, Plaintiff's counsel in that case, the law firm of Burch & Cracchiolo,  
10 wrote to counsel for Plaintiff's partner about the issue of the funds Plaintiff alleges were  
11 taken from EBJJ's accounts at Wells Fargo. In that correspondence, Plaintiff's counsel  
12 informed counsel for Plaintiff's business partner that "[w]e understand that at some point  
13 in 2006 Basil Nona moved \$750,000 in cash from EBJJ's account at Wells Fargo Bank  
14 into a separate account that was established in his name individually and then began  
15 operating the check cashing business as his sole and separate asset at Broadway Liquors."  
16 (*See* 8/14/2014 Correspondence attached hereto as **Exhibit "E."**) That correspondence  
17 was attached an Exhibit to the First Amended Complaint in the action against Nona. (*See*  
18 Exh. D.) Thus, the amount that Plaintiff seeks from Wells Fargo when he prays for  
19 compensatory damages "for cash converted from the bank account of EBJJ Enterprises,  
20 Inc." appears to be \$750,000, which far exceeds the minimum amount required for  
21 diversity jurisdiction.

22 9. Written notice of the filing of this Notice has been delivered to Plaintiff. A  
23 copy of this Notice of Removal will be filed this date with the Clerk of the Arizona  
24 Superior Court, Maricopa County. The Notice of Removal to be filed with the Superior  
25 Court is attached hereto as "**Exhibit F.**"

26 Accordingly, Wells Fargo respectfully requests that this Notice of Removal be  
27 filed, the State Court Action be removed to, and proceed hereinafter in, this Court, and  
28 that no further proceedings in this matter take place in the Arizona Superior Court.

1 RESPECTFULLY SUBMITTED this 30th day of November, 2015.

2 QUARLES & BRADY LLP  
3 Renaissance One  
4 Two North Central Avenue  
Phoenix, AZ 85004-2391

5 By /s/ Michael S. Catlett  
6 Michael S. Catlett  
7 Julia J. Koestner  
8 *Attorneys for Defendant*

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on November 30, 2015, I electronically transmitted the  
11 attached documents to the Clerk's Office using the ECF System for filing. The foregoing  
12 was transmitted by First-Class Mail to:

13 Joseph Pole  
14 24205 N. 65th Avenue  
Glendale, Arizona 85310

15 s/ Kelly Thwaites  
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